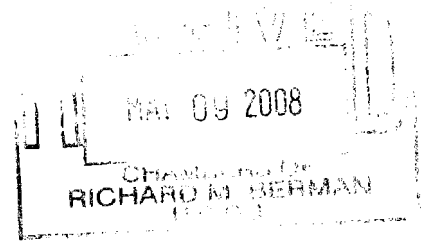


**MEMO ENDORSED**



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL



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BY HAND DELIVERY

Honorable Richard Berman  
United States District Court  
Southern District of New York  
United States Courthouse  
500 Pearl Street  
New York, NY 10007

~~May 9, 2008~~

PL to respond with 2-3 pp  
letter by 5/16 + we'll discuss  
on 5/29/08.

**SO ORDERED:**  
**Date: 5/12/08** *Richard M. Berman*  
Richard M. Berman, U.S.D.J.

Re: Emanuel v. State of New York, et al., 8 CV 1250 RMB

Your Honor:

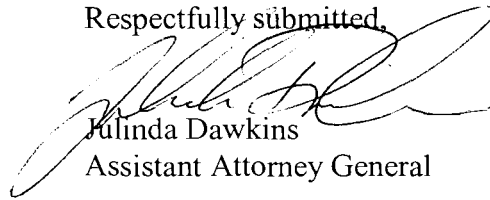
On behalf of the defendants in the above-referenced action, this letter is written to respectfully request a pre-motion conference in order to seek permission to move to dismiss this matter. Defendants intend to move to dismiss the complaint on the following grounds: (i) plaintiffs failed to state a claim upon which relief can be granted, (ii) the court lacks jurisdiction under the Eleventh Amendment to the United States Constitution, and (iii) the individual defendants are entitled to qualified immunity. Currently, a response to the complaint defendants is due by May 21, 2008.

As Your Honor may be aware, plaintiff has alleged that the defendants, New York State Department of Correctional Services ("DOCS") and four individual defendants have discriminated against her under the American with Disabilities Act and the Rehabilitation Act, and accordingly, seeks monetary damages. However, as a matter of law, no claim for money damages may be asserted under the ADA or the Rehabilitation Act against individual defendants, either in their personal or official capacities. See, e.g., Carrasquillo v. City of New York, 324 F. Supp.2d 428, 441(S.D.N.Y. June 25, 2004)("Individuals cannot be named as defendants in ADA suits in either their official or representative capacities"). Also DOCS is entitled to Eleventh Amendment immunity since plaintiff has also sued the State of New York for money damages.

See, Board of Trustees of the University of Alabama v. Garrett, 531 U.S. 356 (2001). Additionally, the Eleventh Amendment bars plaintiff's claims under §1983 for monetary damages against DOCS and all the individual defendants in their official capacities. Furthermore, the individual defendants are entitled to qualified immunity because the defendants' alleged actions did not violate any clearly established constitutional rights of which they could reasonably have been aware. See Luna v. Pico, 356 F.3d 481, 490 (2d Cir. 2004) (defendant entitled to qualified immunity where he reasonably would not have known that his conduct violated plaintiff's constitutional rights).

I thank the Court for its consideration in this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Julinda Dawkins', is written over the typed name and title.

Julinda Dawkins

Assistant Attorney General

cc: Mr. Rocco G. Avallone, Esq.  
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